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12 ATTORNEYS FOR PLAINTIFFS AND THE SETTLEMENT CLASS

13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 RIGOBERTO SARMIENTO, GUSTAVO
LUEVANO-VACA, and others similarly situated,

CIVIL ACT. NO.: 5:20-cv-7974-BLF

17 Plaintiffs,
18 vs.
19 FRESH HARVEST, INC., et al.
20 Defendants.
21
22 .
23

[PROPOSED] ORDER FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FINAL JUDGMENT

****AS MODIFIED BY THE COURT****

Date: October 30, 2023
Time: 11:00 A.M.

1 The motion of Plaintiffs for an order granting final approval of the Settlement of Class
 2 Action and PAGA Claims(the “Settlement”) reached with Fresh Harvest, Inc., SMD Logistics, Inc.
 3 (“Fresh Harvest Defendants”) and Fresh Foods, Inc., Rava Ranches, Inc. (“Fresh Foods
 4 Defendants”) came regularly on for hearing. Good cause having been shown, Plaintiffs’ motion is
 5 **GRANTED and IT IS HEREBY ORDERED:**

6 1. Pursuant to the Preliminary Approval Order and the terms of the Settlement ([ECF No
 7 232-3, Exhibit A](#)), the class Notice ([ECF No 232-3, Exhibit B](#)) was mailed to Class Members via
 8 first class mail in Spanish. Class Members were also sent notice by WhatsApp text message (in
 9 Spanish) at their last available contacts provided, and a website was created and has remained
 10 continuously available. The website can be viewed in Spanish and English and includes, among
 11 other things, viewable, printable and downloadable copies of the Notice in Spanish and English as
 12 well as settlement documents filed with the Court, Plaintiffs’ attorneys’ fee motion, answers to
 13 frequently asked questions about the settlement, key settlement dates, and options on how to contact
 14 the Settlement Administrator (Atticus Administration LLC) and Class Counsel. The Court finds and
 15 determines that this notice procedure afforded the best practicable notice to class members and
 16 provides the basis for the Court to make an informed decision regarding approval of the Settlement
 17 based on the responses of class members. The Court finds and determines that the notice provided
 18 in this case was the best notice practicable, which satisfied the requirements of law and due process.

19 2. The Class as conditionally certified by the Preliminary Approval Order meets all of
 20 the legal requirements for class certification for settlement purposes under Federal Rule of Civil
 21 Procedure 23 and the class is appropriate for final certification for settlement purposes. The Court
 22 certifies for settlement purposes, for treatment as a class action under Rule 23 of the Federal Rules
 23 of Civil Procedure, the Settlement Class of 194 persons that worked for Defendants as hourly
 24 commercial drivers, excluding bus drivers, who operated over-the-road highway vehicles in excess
 25 of 26,000 pounds gross vehicle weight in California or Arizona at any time during the period of
 26 November 12, 2016 to December 10, 2022 and who have not excluded themselves from the
 27 settlement.

28 3. Considering the strength of the case and the risks of further litigation, the Court

1 views the Base Settlement Amount of \$2,031,000 (including the Gross Settlement Amount of
2 \$1,656,724.00 plus the prior out-of-court payments of \$374,276), as a result favorable for the class.

3 4. There have been no exclusions or objections to the Settlement. Settlement class
4 members are now barred from prosecuting the released claims for the time period of their
5 employment with Defendants in the class period as set forth in the Settlement agreement.

6 5. Class members are achieving an average net recovery of over \$5,300 each, which is
7 significant for the truck drivers in the case, and – according to Plaintiffs’ counsel’s estimations –
8 amounts to an additional \$68 of pay per week worked.

9 6. The Settlement was negotiated at arm’s length, after contested motions, multiple
10 court decisions, significant discovery, and after an in-person mediation and additional protracted
11 negotiations thereafter.

12 7. Experienced Class Counsel, attorneys from Law Offices of Santos Gomez and
13 attorneys from Altshuler Berzon, have worked ably and actively to vindicate the class members’
14 interests.

15 9. The Court finds reasonable the enhancement awards requested for Plaintiffs
16 Rigoberto Sarmiento and Gustavo Luevano-Vaca in the amount of \$15,000 each. Plaintiffs faced
17 unique and serious risks in filing this suit, were the subject of personal visits from Defendants’
18 representatives, Plaintiff Luevano-Vaca faced a counterclaim, they both risked notoriety, and they
19 dedicated substantial efforts to benefiting the class, reaching a result with substantial benefits for
20 class members.

21 10. Plaintiffs’ request for \$497,016 in attorneys’ fees and Plaintiffs’ costs in the amended
22 amount of \$56,987.92 are reasonable. The Court has reviewed Class Counsel’s declaration and
23 exhibits and finds the amounts are well-supported, the hours and rates are reasonable, and the fee
24 amount is well below counsel’s reasonable lodestar in this matter.

25 11. The amount of \$18,783.00 requested to be paid to the Settlement Administrator is
26 reasonable and fairly supported.

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1 12. Defendants shall pay the Gross Settlement Amount plus the \$10,000 towards
2 settlement administration costs as set forth in the Settlement within 14 days after the Effective Date.
3 ECF 219-2 at 24.

4 13. The Settlement Administrator shall distribute Plaintiffs' Counsel's fees and costs,
5 Plaintiffs' service awards, the Settlement Administrator's fees and expenses, the payments to the
6 Settlement Class Members, and the payments to the PAGA Members within 14 days of receipt of
7 the Gross Settlement Amount from Defendants, as set forth in the Settlement.

8 14. The Settlement Administrator shall pay the California Labor and Workforce
9 Development Administration \$7,500 as set forth in the Settlement. After 180 days have passed from
10 the commencement of class member payments, the Settlement Administrator is to pay the \$7,500,
11 from any unclaimed funds, prior to redistribution of such funds. If the amount of unclaimed funds is
12 less than \$7,500, the Settlement Administrator shall notify Defendant Fresh Harvest, Inc., of the
13 difference between \$7,500 and the amount of unclaimed funds, and Fresh Harvest, Inc., shall,
14 within 14 days, transmit that amount to the Settlement Administrator, who shall then, within seven
15 days, transmit \$7,500 to the LWDA.

16 15. Within 30 days of the expiration of the original 180 day payment period, the Settlement
17 Administrator shall determine whether it is economically feasible to effect a Second Distribution to
18 Settlement Class Members who have claimed or cashed their first Settlement Payment, and, if so, to
19 make a Second Distribution within 30 days, dividing the remaining money proportionally among
20 those Settlement Class Members who received payments in proportion to their prior Individual
21 Settlement Allocation. If it is not economically feasible to distribute any remaining unclaimed
22 funds, or if there are unclaimed funds remaining after the Second Distribution, the Court approves
23 the cy pres recipient, the Food Bank for Monterey County, to receive any remaining settlement
24 funds that cannot be economically redistributed to class members.

25
26 The Court therefore **ORDERS** that the Settlement is **APPROVED** and the foregoing
27 amounts shall be paid from the settlement fund.

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1 Without affecting the finality of this order in any way, the Court retains jurisdiction of all
2 matters relating to the interpretation, administration, implementation, effectuation, and enforcement
3 of this order and the Settlement.

4 Upon completion of administration of the Settlement, the Settlement Administrator will
5 provide written certification of such completion to the Court and counsel for the parties.

6 This document shall constitute a FINAL JUDGMENT for purposes of Rule 58, Federal
7 Rules of Civil Procedure. The Court directs the Clerk to enter the parties' Settlement of Class
8 Action and PAGA Claims as a final order of this Court for which the Court retains jurisdiction to
9 enforce the judgment and settlement agreement.

10 Dated: October 30, 2023



BETH LABSON FREEMAN
United States District Judge

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